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**UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA**

LURING PAIALII,

Plaintiff,

v.

CITY OF BURBANK, et al.,

Defendants.

Case No. 2:24-cv-08890-CAS-PVC

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANTS  
MOTION FOR JUDGMENT ON  
THE PLEADINGS [FRCP 12(C)]**

**I. INTROODUCTION**

On September 12, 2023, the involved Defendant deputies grabbed Luring Paialii's ("Plaintiff") arms and torso, after which the deputies forcibly took him down to the ground, breaking a table in the office in the process. Plaintiff's First Amended Complaint [Doc. # 11] ("FAC") at ¶ 30. While Plaintiff was on the ground and being held down by the involved deputies, they then began to punch Plaintiff several times, including in the face and head, and also tased Plaintiff multiple times. See FAC at ¶¶ 32-35.

After being arrested, Plaintiff ultimately pled *nolo contendere* to California Penal Code section 69 ("PC 69"), which prohibits the use of threats or violence to deter or prevent police officers from performing their duties. See Def.s' Mot. at 6:4-7. Plaintiff's plea was for a misdemeanor violation and not a felony.

Plaintiff hereby voluntarily dismisses and disavows any force used against him by the involved deputies prior to forcefully being taken down to the ground. Importantly, there is a factual basis for the civil suit, which is separate and apart from the factual basis for the PC 69 plea. Plaintiff's plea for violation of PC 69 does not specify what the factual basis for the plea is. Instead, the plea agreement simply indicates that there is a factual basis for the plea. Here, there is a sufficient factual basis for the plea when Plaintiff was standing and prior to being tackled down to the ground.

This incident was captured by various body cameras worn by the involved deputies and by a surveillance video. The body camera footage captures Plaintiff verbally threatening the involved deputies while they are trying to detain him, including threatening to slap the officers if they touch him. The reports written by the involved deputies also allege that Plaintiff verbally threatened them prior to being forcefully taken down to the ground. This verbal threat by itself is sufficient to satisfy the requisite threat element of PC 69. The video footage also captures Plaintiff advancing towards one of the deputies and getting in the deputy's face while yelling at

1 the deputy to not touch him. The videos also show the deputies grabbing onto  
2 Plaintiff's arms and torso and engage in a physical struggle with Plaintiff, prior to  
3 tackling Plaintiff down to the ground. The involved deputies also allege that they  
4 found Plaintiff's actions of advancing towards the deputy, getting in his face and  
5 yelling at him and then physically resisting and struggling with the deputies while they  
6 were attempting to detain Plaintiff, to be threatening conduct. Accordingly, Plaintiff's  
7 conduct prior to being forcefully taken down to the ground is sufficient to satisfy all  
8 the requisite elements of PC 69 and to form the factual basis of the plea.

9 Here, the factual basis for Plaintiff's civil suit will be based on the involved  
10 deputies forcefully taking Plaintiff down to the ground, repeatedly punching Plaintiff  
11 and tasing him multiple times, all while he was down on the ground. The factual basis  
12 for Plaintiff's civil suit will not include any of the force used against Plaintiff prior to  
13 being tackled down to the ground and Plaintiff will voluntarily dismiss and disavow  
14 any claims for force used against him prior to being forcefully taken down to the  
15 ground. Therefore, the factual basis for civil suit will be separate and apart from the  
16 factual basis for the PC 69 plea and success in Plaintiff's civil suit would not  
17 "necessarily imply the invalidity of his conviction ." See *Heck v. Humphrey*, 512 U.S.  
18 477, 487 (1994). Accordingly, Defendants' Motion should be denied in its entirety.  
19 In the alternative, if the Court finds Plaintiff's Complaint to be improperly plead,  
20 Plaintiff requests to amend the Complaint to clarify that the factual basis for PC 69  
21 plea is separate and apart from the factual basis for the claims in the Complaint.

## 22 **II. LEGAL STANDARD**

23 A motion for judgment on the pleadings is "functionally identical" to a Rule  
24 12(b) motion to dismiss; the only major difference is that a Rule 12(c) motion is  
25 properly brought "after the pleadings are closed and within such time as not to delay  
26 the trial." *Mag Instrument, Inc. v. JS Prods., Inc.*, 595 F. Supp. 2d 1102, 1106–07  
27 (C.D. Cal. 2008) (citing *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192  
28 (9th Cir. 1989)). In ruling on a Rule 12(c) motion, a court must assume the

1 allegations in the challenged complaint are true and must construe the complaint in  
2 the light most favorable to the non-moving party. *See Cahill v. Liberty Mut. Ins.*  
3 *Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996); *Fleming v. Pickard*, 581 F.3d 922, 925  
4 (9th Cir. 2009). Additionally, the non-moving party’s denials of Plaintiffs’  
5 allegations are assumed to be false, and all inferences reasonably drawn from  
6 Plaintiffs’ facts must be construed in favor of the responding party. *Hal Roach*  
7 *Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). A  
8 motion for judgment on the pleadings is only “properly granted when, taking all the  
9 allegations in the pleadings as true, the moving party is entitled to judgment as a  
10 matter of law.” *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998); *Hal*  
11 *Roach Studios*, 896 F.2d at 1550. Dismissal is “appropriate only where the  
12 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable  
13 legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th  
14 Cir. 2008).

15 Under *Heck*, a section 1983 action may not proceed if its success would  
16 “necessarily require the plaintiff to prove the unlawfulness of his conviction.” *Heck*,  
17 512 U.S. at 486. *Heck* requires the Court to “consider whether a judgment in favor  
18 of the plaintiff would necessarily imply the invalidity of his conviction or sentence”.  
19 *Id.* at 487. If “the plaintiff’s action, even if successful, will not demonstrate the  
20 invalidity of any outstanding criminal judgment against the plaintiff, the action  
21 should be allowed to proceed. *Id.* The Supreme Court has emphasized that it was  
22 careful in *Heck* to stress the importance of the term “necessarily”. *Nelson v.*  
23 *Campbell*, 541 U.S. 637, 647 (2004) (quoting *Heck*, 512 U.S. at 487 n.7). “To hold  
24 otherwise,” the Court has explained, “would have cut off potentially valid damages  
25 actions as to which a plaintiff might never obtain favorable termination—suits that  
26 could otherwise have gone forward had the plaintiff not been convicted.” *Id.*

27 To decide whether success on a section 1983 claim would necessarily imply  
28 the invalidity of a conviction, the Court must determine which acts formed the basis

1 for the conviction. When the conviction is based on a guilty plea, the Court looks at  
2 the record to see which acts formed the basis for the plea. See *Lemos v. Cnty. of*  
3 *Sonoma*, 40 F.4<sup>th</sup> 1002, 1006 (9th Cir. 2022), citing *Smith v. City of Hemet*, 394 F.3d  
4 689, 696–97 (9th Cir. 2005) (en banc) and *Sanford v. Motts*, 258 F.3d 1117, 1119–  
5 20 (9th Cir. 2001). A § 1983 action is barred only if “success in the action would  
6 undermine” the factual basis of the guilty plea “in a way that ‘would necessarily  
7 imply or demonstrate’ that the plaintiff’s earlier conviction was invalid.” *Martell v.*  
8 *Cole*, 115 F.4th 1233, 1236 (9th Cir. 2024) (quoting *Smith*, 394 F.3d at 699).

9 An officer’s subsequent use of excessive force would not negate the  
10 lawfulness of the initial arrest attempt, or negate the unlawfulness of the criminal  
11 defendant’s attempt to resist it. *Yount v. City of Sacramento*, 43 Cal.4th 885, 787  
12 (2008)(internal citations and quotations omitted). Even though the civil action and  
13 the criminal conviction both arose from one continuous chain of events, two isolated  
14 factual contexts would exist, the first giving rise to criminal liability on the part of  
15 the criminal defendant, and the second giving rise to civil liability on the part of the  
16 arresting officer. *Id.* An excessive force claim may proceed after a resisting  
17 conviction when the resistance and the allegedly unlawful use of force occur “in  
18 a single continuous chain of events lasting a very brief time. *Hooper v. Cnty. of San*  
19 *Diego*, 629 F.3d 1127, 1131 (9th Cir. 2011). A conviction for resisting arrest is  
20 valid if at some time during a continuous transaction an individual resisted an  
21 officer when the officer was acting lawfully and it does not matter that the officer  
22 might also, at some other time during the same continuous transaction, have acted  
23 unlawfully. *Hooper*, 629 F.3d at 1132; see also *Martell v. Cole*, 115 F.4th 1233,  
24 1236-37 (9th Cir. 2024).

25 *Heck* does not bar a § 1983 action following a resisting arrest conviction  
26 unless the factual basis for the conviction was resistance to the particular use of  
27 force the plaintiff alleges was excessive. When the factual predicate of the  
28 conviction is not clear from the record and the conviction could have been based on

1 an act of resistance different from the plaintiff's conduct during the allegedly  
2 unlawful use of force, a judgment in the plaintiff's favor in the § 1983 action would  
3 not necessarily imply the invalidity of the conviction. *Martell*, 115 F.4<sup>th</sup> at 1240-41.

## 4 **II. ARGUMENT**

### 5 **A. Defendants' Motion is untimely and was filed without seeking leave of** 6 **Court.**

7 In support of their Motion, the defense requested that the Court take judicial  
8 notice [Doc. 40] of the related criminal complaint against Plaintiff [Doc. 40-1], the  
9 related criminal case minute order [Doc. 41-2] and the misdemeanor advisement of  
10 rights, waiver and plea form [Doc. 41-3]. The criminal complaint does not contain  
11 or make reference to any factual basis regarding to the charges. With regards to the  
12 minute order, it simply states that "[t]he Court finds there is a factual basis for the  
13 Defendants' plea". See Minute Order [Doc. 41-2] at 2. The plea form has similar  
14 language and only states "that there is a factual basis for the plea[]", without  
15 specifying what that factual basis is. See Plea Form [Doc. 40-3] at 4.

16 In order to decide whether success on Plaintiff's section 1983 claim would  
17 necessarily imply the invalidity of his conviction, the Court must determine which  
18 acts formed the basis for the conviction. When the conviction is based on a guilty  
19 plea, like we have here, the Court looks at the record to see which acts formed the  
20 basis for the plea. *Lemos*, 40 F.4<sup>th</sup> at 1006, *Sanford*, 258 F.3d at 1119–20. Further,  
21 Plaintiff's § 1983 action is barred only if success in the action would undermine the  
22 factual basis of the guilty plea in a way that would necessarily imply or demonstrate  
23 that the plaintiff's earlier conviction was invalid. *Martell*, 115 F.4<sup>th</sup> 1236<sup>1</sup>; see also  
24 *Kyles v. Baker*, 72 F. Supp. 3d 1021, 1037 (N.D. Cal. 2014).

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26 <sup>1</sup> Section 148(a)(1) is a misdemeanor offense which penalizes any person who "willfully  
27 resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician .  
28 . . in the discharge or attempt to discharge any duty of his or her office or employment" (Cal.

(footnote continued)

1 Part of the record for Plaintiff's criminal case would include the videos of the  
2 incident and the involved officers' reports. The officers' body cam videos capture  
3 the Plaintiff verbally threaten to slap the involved officers if they touch him, while  
4 the officers are attempting to detain the Plaintiff. The videos also appear to show  
5 Plaintiff physically resisting when the officers initially grab the plaintiff and the  
6 involved officers allege that they were threatened by this physical resistance during  
7 the initial struggle.

8 Here, since the plea agreement does not specify what the factual basis for it  
9 was, success on Plaintiff's § 1983 would not necessarily invalid his conviction.  
10 This is especially true since there is a factual basis which would satisfy all elements  
11 of PC 69, during the initial encounter when Plaintiff was still standing, and prior to  
12 being tackled and forcefully taken down to the ground, where he was tased and  
13 punched multiple times. Moreover, Plaintiff is voluntarily dismissing and is  
14 disavowing any use of force against him prior to being forcefully taken down and  
15 tackled to the ground. See *Lemos*, 40 F.4<sup>th</sup> at 1007 (finding that Plaintiff disavowed  
16 any claim based on force used by the officer earlier in the encounter and that the  
17 officer used excessive force when he later tackled her, so if Plaintiff were to prevail  
18 in her civil action, it would not necessarily mean that her conviction was invalid and  
19 would not be barred by *Heck*). In *Lemos*, the Ninth Circuit held that if an officer is  
20 acting lawfully and the defendant resists him, the defendant has violated the law and  
21 "[w]hatever might happen later, it cannot undo the violation" and that "[t]he use of  
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24 Penal Code § 148(a)(1). Section 69, under which Plaintiff was convicted, is a felony offense  
25 which penalizes any person who "who attempts, by means of any threat or violence, to deter or  
26 prevent an executive officer from performing any duty imposed upon such officer by law, or who  
27 knowingly resists, by the use of force or violence, such officer, in the performance of his duty." *Id.*  
28 § 69. "This difference [should] not impact the Court's analysis" here. *Heltsley v. Harris*, No. C  
06-2626 CW, 2007 WL 1624461, at \*5 n.1 (N.D. Cal. June 4, 2007).



1 excessive force after the completed [resisting] violation would not invalidate the  
2 completed [resisting] violation”. *Id.* at 1008.

3       The Ninth Circuit has held that a resisting arrest conviction is valid if at some  
4 time during a continuous transaction an individual resisted an officer when the  
5 officer was acting lawfully and that it “does not matter that the officer might also, at  
6 some other time during the same ‘continuous transaction’ have acted unlawfully.”  
7 See *Hooper v. County of San Diego*, 629 F.3d 1127, 1132 (9th Cir. 2011) see also  
8 *Sanders v. City of Pittsburgh*, 14 F.4<sup>th</sup> 968, 971 (9th Cir. 2021) (same). The Court in  
9 *Hooper* held that a § 1983 suit is not barred by *Heck* even when the allegedly  
10 excessive force and the obstructive act that is the basis of the plaintiff’s conviction  
11 occur “in a single continuous chain of events lasting a very brief time.” *Hooper*,  
12 629 F.3d at 1129, 1131. Here, just as in the *Hooper* case, it is Plaintiff’s position  
13 that the involved officers used excessive force only after the conduct giving rise to  
14 Plaintiff’s section 69 conviction was completed, and thus plaintiff’s civil 1983 claim  
15 does not necessarily imply the invalidity of Plaintiff’s section 69 conviction. *Id.* at  
16 1133 (holding that Plaintiff’s subsequent 1983 claim was not *Heck* barred because a  
17 holding in the § 1983 case that the use of force was excessive would not negate the  
18 lawfulness of the initial arrest attempt or negate the unlawfulness of Plaintiff’s  
19 attempt to resist it).

20       Here, there is an “independent sufficient bases for [Plaintiff’s] guilty plea” so  
21 the civil action “would be unaffected by a finding that the [officers] used excessive  
22 determin[e] the lawfulness of [the involved officers’] actions throughout the whole  
23 course of [Plaintiff’s] conduct.” See *Beets v. Cnty. of Los Angeles*, 669 F.3d 1038,  
24 1045 (9th Cir. 2012). To the extent that Defendants argue that this incident was one  
25 continuous transaction or that the incident occurred in a short amount of time, the  
26 “*Heck* analysis [is not] depended on the precise amount of time or space between the  
27 act of [resisting] for which the plaintiff was convicted and the use of force the  
28 plaintiff challenged was excessive.” See *Martell*, 115 F.4<sup>th</sup> at 1238, citing *Lemos*,



1 40 F.4<sup>th</sup> at 1007. “[T]his principle holds true regardless of the number of seconds or  
2 minutes between the plaintiff's act of resistance or obstruction and the officer's  
3 allegedly unlawful use of force.” *Martell*, 115 F.4<sup>th</sup> at 1238. Since the factual  
4 predicate of the conviction is not clear from the record and the conviction could  
5 have been based on an act of resistance different from the Plaintiff's conduct during  
6 the allegedly unlawful use of force, a judgment in the Plaintiff's favor in the civil  
7 action would not necessarily imply the invalidity of the conviction.

### 8 **III. CONCLUSION**

9 Based on the foregoing, Defendants Motion should be denied in its entirety.  
10 In the alternative, since Plaintiff is voluntarily dismissing and disavowing any force  
11 used against him prior to being tackled and forcefully taken down to the ground,  
12 Plaintiff believes that the Complaint is sufficiently pled. However, if the Court finds  
13 that Plaintiff's Complaint is deficiently plead, Plaintiff seeks leave to amend the  
14 complaint and cure any deficiencies.

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16 Respectfully submitted,

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18 DATED: April 18, 2025

THE LAW OFFICES OF DALE K. GALIPO

19  
20 By: /s/ Eric Valenzuela

Eric Valenzuela

21 Attorneys for Plaintiffs  
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